

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX

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ONEIR MCINTOSH

Plaintiff,

VERIFIED COMPLAINT

-against-

JURY TRIAL DEMANDED

CITY OF NEW YORK, POLICE OFFICER MICHAEL CORIZZI, POLICE OFFICER BENNETT SHELLEY and POLICE OFFICERS "JOHN DOE" whose identities are currently unknown.

Index No.:

Defendants.

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Plaintiff, by his attorneys, MARK L. LUBELSKY AND ASSOCIATES, complaining of the Defendants, alleges as follows:

NATURE OF CASE

1. This is an action by a citizen of the State of New York brought to remedy a deprivation of his civil rights and is seeking damages, and other appropriate legal and equitable relief.
2. As the unlawful practices complained of herein occurred within the County of Bronx venue is proper.

PARTIES

3. Upon information and belief, that all times hereinafter mentioned, Defendant CITY OF NEW YORK was and still is a municipal corporation having its principal place of business in the County, City and State of New York.

4. Upon information and belief, that all times hereinafter mentioned, Defendant CITY OF NEW YORK operated, maintained and was responsible for The New York City Police Department located in Bronx County, City and State of New York.

5. Upon information and belief, POLICE OFFICERS "JOHN DOE" deprived Plaintiff of his civil rights while acting under the color of state law.

6. Upon information and belief, POLICE OFFICER MICHAEL CORIZZI deprived Plaintiff of his civil rights while acting under the color of state law.

7. Upon information and belief, POLICE OFFICER BENNETT SHELLEY deprived Plaintiff of his civil rights while acting under the color of state law.

8. Upon information and belief, POLICE OFFICERS "JOHN DOE" were employed by the New York City Police Department at all material times herein.

9. Upon information and belief, POLICE OFFICER MICHAEL CORIZZI was employed by the New York City Police Department at all material times herein.

10. Upon information and belief, POLICE OFFICER BENNETT SHELLEY was employed by the New York City Police Department at all material times herein.

11. Upon information and belief, POLICE OFFICERS "JOHN DOE" were employed by the CITY OF NEW YORK at all material times herein.

12. Upon information and belief, POLICE OFFICER MICHAEL CORIZZI was employed by the CITY OF NEW YORK at all material times herein.

13. Upon information and belief, POLICE OFFICER BENNETT SHELLEY was employed by the CITY OF NEW YORK at all material times herein.

14. At all material times herein, Plaintiff ONEIR MCINTOSH is a male resident of the State of New York.

15. At all relevant times herein, Plaintiff ONEIR MCINTOSH is and was a resident of the County of Bronx, City and State of New York.

16. Plaintiff at all relevant times herein, resided at 4401 Barnes Ave, Bronx, NY 10466.

MATERIAL FACTS

17. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff was lawfully walking at the Corner St. Quen Street and White Plains Road, Bronx, New York with his friend Carlos Pedea.

18. On or about October 18, 2011 at or about 10:00 p.m., out of nowhere Defendant Police Officers rushed Plaintiff and his friend with their guns drawn, yelling at him to "freeze get on the ground and put your hands up."

19. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff obeyed the Defendant Police Officers command and got on his knees with his hands up.

20. On or about October 18, 2011 at or about 10:00 p.m., one of the defendant Police Officers kneed the Plaintiff in the back causing the Plaintiff to fall face first onto the sidewalk.

21. On or about October 18, 2011 at or about 10:00 p.m., one of the defendant Police Officers proceeded to kick the Plaintiff in the ribs and step on his back while Plaintiff lay face down on the sidewalk.

22. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff was searched by the Police Officers.

23. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff was placed in handcuffs.

24. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff was unlawfully arrested by defendants without a warrant and without probable cause.

25. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff was unlawfully arrested by defendants without a warrant and without probable cause.

26. On or about October 18, 2011 at or about 10:00 p.m., defendants did not read Plaintiff his Miranda Rights.

27. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff did not threaten defendants in any manner at any point.

28. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff was unlawfully arrested by defendants without reasonable suspicion, probable cause or any valid basis for a warrantless arrest.

29. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff did not engage in any conduct, behavior or activity that was criminal, suspicious, or dangerous to himself or others.

30. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff did not respond in a manner that was evasive, suspicious, false or otherwise exhibited consciousness of guilt as to provide justification for the arrest.

31. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff was unlawfully detained and wrongfully imprisoned in violation of Plaintiff's civil rights.

32. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff was arrested for disorderly conduct P.L 240.20, resisting arrest P.L. 205.30 and obstructing government functions P.L. 195.06.

33. On or about October 18, 2011 , Plaintiff was transported to the 47th Precinct of the New York City Police Department.

34. On or about October 18, 2011 at or about 10:00 p.m., at no time during the events described herein was Plaintiff intoxicated, incapacitated, a threat to the safety of himself or others or disorderly.

35. On or about October 18, 2011 at or about 10:00 p.m., defendants had no warrant for the arrest of Plaintiff, no probable cause for the arrest, and no legal cause or excuse to seize the Plaintiff.

36. Upon information and belief, defendants intentionally attempted to deprive Plaintiff of his liberty.

37. Upon information and belief, defendants intentionally deprived Plaintiff of his liberty.

38. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff was deprived of his civil rights by defendants while acting under color of state law.

39. On or about October 18, 2011 at or about 10:00 p.m., defendants confined Plaintiff to a bounded area.

40. On or about October 18, 2011 at or about 10:00 p.m., defendants intended to confine Plaintiff to a bounded area.

41. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff was conscious of his confinement.

42. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff at no time consented to the unlawful confinement.

43. On or about October 18, 2011 at or about 10:00 p.m., defendants falsely imprisoned Plaintiff.

44. On or about October 18, 2011 at or about 10:00 p.m., defendants wrongfully imprisoned Plaintiff.

45. On or about October 18, 2011 at or about 10:00 p.m., defendants' behavior towards Plaintiff was prohibited by State law.

46. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff's right not to be subject to the illegal conduct of defendants was clearly established.

47. On or about October 18, 2011 at or about 10:00 p.m., it was objectively reasonable for defendants to know his conduct violated the civil rights of Plaintiff.

48. On or about October 18, 2011 at or about 10:00 p.m., it was objectively reasonable for defendants to know that there was no lawful basis for the arrest, detention and imprisonment of Plaintiff.

49. On or about October 18, 2011 at or about 10:00 p.m., it was objectively unreasonable that defendants did not know that his conduct violated the rights of Plaintiff.

50. On or about October 18, 2011 at or about 10:00 p.m., it was objectively unreasonable that defendants did not know there was no lawful basis of the arrest, detention and imprisonment of Plaintiff.

51. On or about October 18, 2011 at or about 10:00 p.m., a reasonable officer in defendants' position would not have thought their actions were lawful.

52. On or about October 22, 2011, defendants commenced a criminal proceeding against Plaintiff.

53. On or about October 22, 2011, the criminal proceeding commenced was by defendants with malice.

54. On or about October 22, 2011, defendants were totally lacking probable cause to commence the criminal proceedings against Plaintiff.

55. Upon information and belief, Plaintiff remained imprisoned for approximately one day.

56. On or about October 12, 2011 at or about 8:00 p.m., Plaintiff was released from imprisonment.

57. On or about May 14, 2012, all charges against Plaintiff were dismissed.

58. Defendants' entire course of conduct against the Plaintiff was the result of a lack of training by the Defendant CITY OF NEW YORK.

59. Defendants' entire course of conduct against the Plaintiff was the result of a lack of improper supervision by Defendant CITY OF NEW YORK.

60. Defendants' entire course of conduct against the Plaintiff was the result of a lack of improper hiring by Defendant CITY OF NEW YORK.

61. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff was deprived of his liberty and suffered from being falsely imprisoned.

AS A FIRST CAUSE OF ACTION

62. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "61" inclusive, with the same force and effect as if more fully set forth at length herein.

63. Plaintiff was arrested and detained by the defendants on or about October 18, 2011 at or about 10:00 p.m...

64. On or about October 18, 2011 at or about 10:00 p.m., Defendants intended to confine Plaintiff.

65. On or about October 18, 2011 at or about 10:00 p.m., Defendants confined Plaintiff.

66. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff was at all times conscious of the confinement.

67. On or about October 18, 2011 at or about 10:00 p.m., Plaintiff at all times never consented to the confinement.

68. On or about October 18, 2011 at or about 10:00 p.m., the confinement was not privileged at anytime.

69. On or about October 18, 2011 at or about 10:00 p.m., Defendants conduct violate clearly established constitutional rights of which a reasonable person would have known.

70. On or about October 18, 2011 at or about 10:00 p.m., it was not objectively reasonable for defendants to believe their actions were lawful.

71. That by reason of the foregoing, Plaintiff has suffered damages and seeks recovery for compensatory damages and reasonable attorneys' fees and costs from all defendants and punitive damages from all individual defendants, in an amount to be determined upon the trial of this action.

AS A SECOND CAUSE OF ACTION

72. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "71" inclusive, with the same force and effect as if more fully set forth at length herein.

73. Defendants commenced a criminal proceeding against Plaintiff.

74. The proceeding terminated in the Plaintiffs favor.

75. The proceeding was not based on probable cause and brought with actual malice.

76. That by reason of the foregoing, Plaintiff has suffered damages and seeks recovery compensatory damages and reasonable attorneys' fees and cost from all defendants and punitive damage from all individual defendants, in an amount to be determined upon trial of this action.

AS A THIRD CAUSE OF ACTION

77. Plaintiff repeats and reiterates each and every allegation contained in paragraphs numbered "1" through "76" inclusive, with the same force and effect as if more fully set forth at length herein.

78. Defendants had a duty to properly train Defendant Officers and Defendants failed to properly train Defendant Officers.

79. The failure to properly train defendant Officers caused Plaintiff to be deprived of his civil rights by the defendant Officers acting under color of state law.

80. The failure to properly train defendant Officers caused Plaintiff to be deprived of his civil rights by person(s) acting under color of state law.

81. Defendants had a duty to properly supervise defendant Officers and defendants failed to properly supervise defendant Officers.

82. The failure to properly supervise defendant Officers caused Plaintiff to be deprived of his civil rights by the defendant Officer acting under color of state law.

83. The failure to properly supervise defendant Officers caused Plaintiff to be deprived of his civil rights by person(s) acting under color of state law.

84. That by reason of the foregoing, Plaintiff has suffered damages and seeks recovery for compensatory damages and reasonable attorneys' fees and costs from all defendants and punitive damages from all individual defendants, in an amount to be determined upon the trial of this action.

WHEREFORE, Plaintiff demands judgment against the Defendants in an amount to be determined at trial including but not limited to compensatory and punitive damages against all Defendants and attorneys' fees and the costs and disbursements of this action.

JURY DEMAND

Plaintiff demands a trial by jury.

Dated: New York, New York
January 16, 2012

MARK L. LUBELSKY AND ASSOCIATES

By: _____
Mark L. Lubelsky, Esq.
Attorneys for Plaintiff
123 West 18th Street, Eighth Floor
New York, New York 10011
(212) 242-7480
File: 6853

CLIENT VERIFICATION

ONEIR MCINTOSH, being duly sworn deposes and says the following under the penalties of perjury;

I am the plaintiff in the within action, and as such, I am fully familiar with all the facts and circumstances herein.

I have read the foregoing COMPLAINT, and know the contents thereof; the same is true to my own knowledge, except as to the matters therein alleged to be on information and belief, and as to those matters, I believe them to be true.

Dated: New York, New York

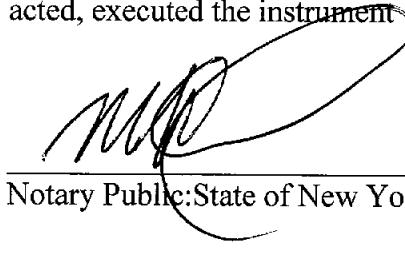
January 16, 2013



ONEIR MCINTOSH

State of New York)
) ss.:
County of New York)

On the 16th day of January, in the year 2013 before me, the undersigned, a Notary Public an and for the State, personally appeared ONEIR MCINTOSH personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) who name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public: State of New York

Matthew W Beckwith
Notary Public
State Of New York
My Commission Expires 04-19-2014